

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
THOMAS GORCZYCA,

*Plaintiff,*  
v.  
NVR, INC.,  
*Defendant.*

PLAINTIFF'S LOCAL RULE 56  
COUNTERSTATEMENT OF  
MATERIAL FACTS AND  
STATEMENT OF MATERIAL FACTS

Civil Action No. 13-cv-06315

Pursuant to Rule 56 of the Local Rules of the Western District of New York, Plaintiff Thomas Gorczyca submits the following Counterstatement to Defendant's "Statement of Material Facts in Support of Motion for Summary Judgment":

1. Not in dispute.
2. Not in dispute.
3. The Complaint speaks for itself, and therefore Plaintiff disputes Defendant's characterization.
4. Plaintiff was not paid overtime as required by the FLSA but otherwise disputes Defendant's characterizations.
5. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of this statement because the parties have not completed any discovery in this action. Plaintiff therefore denies this statement in its entirety.
6. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of this statement because the parties have not completed any discovery in this action. Plaintiff therefore denies this statement in its entirety.

7. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of this statement because the parties have not completed any discovery in this action. Plaintiff therefore denies this statement in its entirety.

8. Not in dispute.

9. The complaint speaks for itself, and therefore Plaintiff disputes Defendant's characterization.

10. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of this statement because the parties have not completed any discovery in this action. Plaintiff therefore denies this statement in its entirety.

11. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of this statement because the parties have not completed any discovery in this action. Plaintiff therefore denies this statement in its entirety.

12. Plaintiff denies that he negotiated the severance agreement. *See Affirmation of Thomas Gorczyca, sworn to December 2, 2016 ("Gorczyca Aff.").<sup>1</sup>*

13. Plaintiff denies that he could negotiate the severance agreement and that had counsel. *See Gorczyca Aff.*

14. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of this statement because the parties have not completed any discovery in this action. Plaintiff therefore denies this statement in its entirety.

15. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of this statement because the parties have not completed any discovery in this action. Plaintiff therefore denies this statement in its entirety.

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<sup>1</sup> The Affirmation of Thomas Gorczyca is attached to Plaintiff's Appendix to Local Rule 56 Counterstatement of Material Facts as Exhibit A.

16. Plaintiff denies that he could negotiate the severance agreement. *See Gorczyca Aff.* Plaintiff otherwise lacks knowledge or information sufficient to form a belief as to the truth of this statement because the parties have not completed any discovery in this action. Plaintiff therefore denies this statement in its entirety.

17. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of this statement because the parties have not completed any discovery in this action. Plaintiff therefore denies this statement in its entirety.

18. Not in dispute.

19. Not in dispute.

20. Not in dispute.

21. The agreement speaks for itself.

22. Not in dispute.

23. The agreement speaks for itself.

24. Plaintiff filed his written consent in the *Tracy* matter on January 19, 2007.

*See Tracy v. NVR, Inc.*, 04-cv-06541, Doc. No. 14 (W.D.N.Y.), Consent Form of Thomas Gorczyca.<sup>2</sup>

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<sup>2</sup> The Consent Form of Thomas Gorczyca is attached to Plaintiff's Appendix to Local Rule 56 Counterstatement of Material Facts as Exhibit B.

Dated: December 5, 2016

**THOMAS & SOLOMON LLP**

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